IN THE COUNTY COURT OF VICTORIA

Revised
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AT MELBOURNE
CRIMINAL JURISDICTION

CR 17-01370

DIRECTOR OF PUBLIC PROSECUTIONS

v

PAUL HANSON

JUDGE:	HER HONOUR JUDGE GAYNOR
WHERE HELD:	Melbourne
DATE OF HEARING:	8 November 2017
DATE OF SENTENCE:	8 November 2017
CASE MAY BE CITED AS:	DPP v Hanson
MEDIUM NEUTRAL CITATION:	[2017] VCC 1620

REASONS FOR SENTENCE

Subject:

Catchwords:

Legislation Cited:

Cases Cited:

Sentence:

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Ms D. Henderson	
For the Accused	Mr R. Richter QC with Mr T. Alexander	

HER HONOUR:

1 Paul Joseph Hanson, you have pleaded guilty before me to one charge of obtaining a financial advantage by deception contrary to s.82(1) of the *Crimes Act*. The facts underlying your offending as follows. I annexe as an exhibit the very full prosecution opening in this matter.

2 In short compass, you were the sole director and secretary of a company, WIDA Plumbing Supplies Pty Ltd which ultimately got into financial trouble whereby substantial debts were incurred requiring recourse to the Bendigo Bank for finance. Part of the conditions of that finance related to guarantees to be given by members of your family.

3 Eventually as a result of an inability ultimately by that company to service its debt to the Bendigo Bank, you entered a voluntary bankruptcy and administration and at which time you had an overdraft account with a deficit balance in excess of $176,211.27.

4 In the course of settling these affairs, certain premises were sold and the overdraft was reduced. Part of the conditions of the administration of your affairs included a ban on you having authority to deal with WIDA's assets.

5 In order to deposit funds into the overdraft account following certain sales, the Bendigo Bank lifted a hold that had been put onto the account and due to an administrative oversight, the holder in that overdraft was never rescinded.

6 You requested the bank, in September 2013, a breakdown of the amounts still outstanding to the bank and lawyers acting on behalf of the account responded to that by letter advising that the amount outstanding was about $600,000 plus.

7 Between 6 and 25 November 2013 certain amounts were withdrawn from the overdraft placing it into a debt deficit of more than $50,000.

8 As at 28 November 2013, WIDA remained in liquidation and you continued to have no authority to deal with its assets and therefore no authority was to withdraw any funds from the overdraft account.

9 On 28 November 2013, using your wife's login details, you accessed the Bendigo Bank's online banking facility and discovered that due to the administrative oversight relating to that overdraft to which I have already referred, you were still able to access the overdraft account.

10 It is stated in the prosecution opening that when you accessed that overdraft account, it would have been apparent to you that the account had in excess a deficit of $50,000 but the total amount available to be withdrawn was in excess of $124,000.

11 Using online banking, you then transferred in separate transactions first, an amount of $1000; secondly an amount of $123,000; and third, an amount of $763.84 from the overdraft account to a Bendigo Bank account held jointly by yourself and your account. These three transactions caused the overdraft account to revert to a deficit of $175,000.

12 After the transactions from the overdraft account to the joint account were effected on 28 November 2013, on that same day you then transferred $100,000 and then a $1000 from the joint account to an ANZ account held solely by your wife. Then on 29 November 2013, you further transferred amount of $23,765 to that account.

13 Then on 30 November 2013, your wife attended the Caroline Springs ANZ branch and signed a credit voucher transferring $120,000 from her account to her son and your step-son's first ANZ account which is known as C. Spencer's ANZ account No.1.

14 On 2 December 2013, your step-son Cayden Spencer transferred $120,000

from that No.1 account to a second ANZ account held by him. Then on 6 December 2013, at the request of yourself, Spencer withdrew $60,000 in cash from the No.2 account and provided it to you.

15 On 10 December 2013, again as a result of a request by you, Spencer withdrew a further $59,700 in cash from the No.2 account and provided it to you.

16 Receivers have undertaken investigations in order to retrieve and recover the funds which were lost but have been unsuccessful in recovering those funds for the Bendigo Bank.

17 You participated in a record of interview with Victoria Police on 9 October 2014 where you admitted conducting the transactions I have described in relation to the overdraft account and conducting the subsequent withdrawals from the joint account but said the money was placed in your step-son's account because you did not have another bank account and did not want anything more to do with the Bendigo Bank which had overseen the sale of the various properties resultant upon your bankruptcy.

18 You told police that you had asked your step-son to withdraw the funds in two separate cash amounts, that you had received it, hidden the cash at your home and spent it on drugs, gambling and alcohol. You however denied dishonesty saying that, "Once the family home was sold and the bank's realised their security against that overdraft the balance of the account belonged to me".

19 You said you had always believed that you had an honest claim of right over the money. The overdraft had been secured by your parents property.

20 You also told police that at the time you conducted those transactions you were depressed and bed-ridden because you had lost a 40 year old family

business, that you were unable to cope and conceded that although the overdraft account was opened in your business name, it was not the company's name.

21 This matter was ultimately resolved at committal mention on 7 July 2017 by way of straight hand-up brief and no witnesses were cross-examined.

22 I now turn to your personal circumstances. You are 39 years of age and have no prior convictions. You are one of three children born to your parents and as I apprehended, are the only member of your family ever to have been in trouble with the law.

23 You grew up in Melton living a fairly happy life in what your counsel described as a working-class family. Ultimately you were educated at St Patrick's College in Ballarat. You completed Year 12. During your school years you engaged in a number of charitable enterprises run by that school including volunteering at an elderly residence accommodation and volunteering for the Christian Brother's Edmund Rice camps which are run for underprivileged children.

24 On leaving school you attended Victoria University where you obtained an Advanced Diploma in Business Administration. You were then hired by WIDA Plumbing, a company engaged in plumbing supplies and you took on the position of General Manager. That firm was run by a friend of your family.

25 In 2006 in your late 20s you took the opportunity to purchase the company. This, after only five or six years of having been employed there. Your father also ultimately worked for them and the business increased to the point where you were earning roughly in the region of $250,000 per year with a staff of 22.

26 It appears as time went on and you became more and more successful you were somewhat drawn to what often goes with successful business

enterprises. That is, you became involved in gambling at the casino and with that came use of cocaine.

27 As a result of your greater and greater involvement in those activities, your attention to your business waned. It fell into difficulties. As outlined in the summary of the prosecution case against you, you incurred debts and ultimately had to take out substantial loans from the bank and the whole of your life ultimately unravelled to the point where your dealings with the bank became decidedly hostile and I do accept that at the time of this offending you were aggrieved. I am not in any way saying you were justifiably aggrieved but you were aggrieved at what you perceived to be the bank's unfair treatment of you.

28 I was in the course of the plea presented with a large number of references from friends who have known you for many years. Your offending was described by most of them as out of character.

29 Note was made in those references of the considerable amount of charity work carried out by you by your company; that it included donations to football and netball clubs in the local Melton area and the bowls club. In particular you involved yourself in the charity, Child Wise which is an organisation dedicated to assisting abused children and served on the board of that organisation.

30 There were also donations to Save the Children fund, the Starlight Foundation and the Good Friday Appeal for the Royal Children's Hospital.

31 One of your referees has gone on to become your employer, that is, Mr Greg Houston who is the managing director of Forza Global Pty Ltd which is also a plumbing supplies company.

32 Mr Houston, in his reference, referred to his dealings with you prior to you becoming an employee of that organisation. You are now its executive

general manager and your counsel informed me that you indeed invested some money in this organisation when your business WIDA was operating successfully.

33 Mr Houston spoke positively, not only of your character and business acumen prior to your employment with him, but also of the work that you have been doing as executive general manager with Forza which includes you having day to day access to the company's bank account's financial dealings.

34 He said you worked closely with the company's financial team suppliers and customers and concluded, "My trust and faith in his honesty and integrity have not been influenced by the indiscretion that occurred in raising this charge against him as I know that is not part of his character and this type of behaviour would not be repeated".

35 Obviously there was some psychological fallout for you as your business declined and essentially expired. I received a medical certificate from your general practitioner to the effect that for more than two years you have been taking anti-depressants. You ultimately realised that your lifestyle in terms of gambling and drug use were ruinous to you and I was informed by your counsel that you attended upon both Narcotics Anonymous and Gamblers Anonymous in late 2014, prior in fact to the time that you were interviewed by police.

36 I also received a letter from you addressed to the court. Accused persons engaging in this enterprise sometimes do so at their peril, as such documentation can often be self-serving but I was impressed by the contents of what you wrote to the court.

37 You talked about, following the demise of your business, that you fell into a deep depression. You spoke of your anger at the bank and you stated, "At the time I convinced myself that I had a right to access the money available in the

overdraft account because I despised the bank".

38 I do accept that the early plea you have entered is indicative of a true remorse for your activities and I regard that as a mitigating factor in this case. That is, I find that you are remorseful for what you did as opposed to remorse following upon your apprehension and legal difficulties, which is unfortunately often the case with accused persons in this court.

39 The situation now is one where for in excess of two years as I understand it, you have been free of drug use. You have ceased gambling. You have taken up a successful occupation. I understand your wife also works for the same organisation. Otherwise there has been no further difficulty from you.

40 The prosecution submitted that I should deal with you by way of a sentence of imprisonment to be immediately served. To some extent this is an understandable submission.

41 Frauds perpetrated upon public institutions such as banks are necessarily dealt with by courts in a stern manner. These public institutions are essential for the financial affairs of the public at large and do need to be protected and those who seek to defraud them do need to be dissuaded from such activity, and in particular a message must be sent out to the community, that persons who act as you did will be dealt with severely in order to deter them from such criminal activity.

42 I am very grateful to the learned prosecutor for her extremely detailed submissions in this regard. However there were certain of those submissions I did not agree with. It was submitted that in cases such as this, prior good character is of less mitigatory weight. I do not agree with that submission because my understanding is that that principle applies where a person has unbeknownst to the authorities, been engaging in criminal behaviour for a considerable period of time, that criminal activity involving a repetition of that

crime.

43 Hence logically, in such a situation where a person might have been continually offending over a period of years in the same way, it could not possibly be said that their assertion of prior good character would carry the same weight as it would in a case such as this, where that offending is a one-off if you like.

44 Secondly, it was conceded by the prosecution that the amount taken although not insignificant does not necessarily represent a serious example of this type of crime.

45 In my view whilst I accept that general deterrence is the primary principle to which this court must have regard in the sentencing exercise before it, that does not necessarily have to be expressed by way of a term of imprisonment to be immediately served.

46 I make it very clear sir, that in finding that it is not necessary I impose an immediate term of imprisonment upon you today I am in any way excusing your behaviour. It may well have been that you were too successful too young that it went to your head, that you became involved in the life of "corporate glamour", which was ultimately ruinous to you.

47 But at the end of the day, it was your participation in that lifestyle which led to the neglect of your business which led to you being in the position you were vis a vis the bank, and which ultimately led to the loss of your own possessions; in particular the loss of your parents' home. Ultimately you have no one to blame but yourself.

48 I certainly understand that at the time of this offending you were at the grips of drug and alcohol, I do not know if addiction is too high a word, but you were in the toils of a very pervasive habit, that you were suffering under a large sense

of grievance.

49 None of those matters excuse what you did. What does stand you in good stead is the fact that you have a strong history of employment. You have been a contributing member of society, particularly in your charitable activities, it could be said, somewhat above and beyond the norm. You have taken the necessary steps to deal with the problems in your life.

50 You are now gainfully employed. You continue to enjoy the support of your wife. You have two young sons whom you mentioned in your letter to the court and I am of the view, and I note this is a view shared by the Community Corrections officer who assessed you, that you are at low-risk of offending and that issues such as the protection of the community are not ones to which this court need have particular regard. Nor does the issue of specific deterrence present itself as one to be addressed in this sentencing exercise.

51 You have also placed $24,000 in trust for repayment to the bank. Essentially the value of that action demonstrates an intention by you to repay the monies that you owe the bank. I understand that the bank is not necessarily going to accept that money at this stage. There is a requirement of a greater upfront repayment and then there will be a requirement of a fairly hefty monthly repayment required by you.

52 In other words, you and the bank have not sorted out what those payments are going to be, but I do accept and indeed it was conceded by the prosecution, that it does indicate an intention on your part to repay.

53 I also accept this was not pre-meditated dishonesty. It was opportunistic. But I do accept that once you made the decision to behave as you did, it was a fairly deliberate decision, if I can put it that way, involving some thought by you with seeking to cover your tracks in the way that you transferred the money from various accounts until it was ultimately in the hands of your step-son. It

was submitted to me that this was an aggravating feature and to some extent I accept that.

54 I also note that you were interviewed by police in 2014 but were not charged until late 2016. Madame Prosecutor informed me that the reason for this was that ASIC became involved and at one stage were of the view that wider offending, if you like, had taken place than that which is ultimately being charged against you, which necessitated a more long-lasting investigation than would otherwise have been the case.

55 That may have been so but at the end of the day, you are before the court in relation to one charge only and I do regard delay as having a part to play in the mitigatory circumstances of your case.

56 Overall in sentencing you I do take into account your previous good history. I accept that you are genuinely remorseful for your offending. I do not regard you as a person likely to offend again in the future. I take into account the fact that you have no prior convictions and that ultimately, although this was serious offending, it was not of such a magnitude or duration that I should conclude that the only way to deal with you is by way of a term of imprisonment to be immediately served.

57 I have had you assessed for a community corrections order and you have been found suitable for placement on such an order.

58 Notwithstanding the fact that the terms upon which a community corrections order may be imposed by this court, I have been somewhat limited by recent legislation, a community corrections order still contains within it features which are intended to be punitive and which are intended to have the generally deterrent effect that is required in my view in a case such as this.

59 I therefore propose to place you on this order but I can only do so with your

consent, sir. Could you stand up please? I need to explain the conditions. They are:

60 That you must report to the Community Corrections office within two working days of the making of this order. That is, by Friday of this week;

61 Whilst you are on the order, which will last for a period of three years, you may not leave Victoria without the permission of the Community Corrections Office. That is going to be somewhat difficult for you and I understand that you regularly travel overseas in the course of your employment, but you need to remember that before you go overseas, you have to make that very clear and receive permission from the Community Corrections Office before you in fact undertake that trip;

62 You must report any change of address or employment to the Community Corrections Office within 48 hours of the making of that change;

63 You must report to and receive visits from the Community Corrections Office;

64 You must not attend upon the Community Corrections Office under the influence of drugs or alcohol;

65 You must obey all lawful directions of the Community Corrections Office.

66 I am going to impose one special condition and that is that you undertake 300 hours of unpaid community work whilst on the order.

67 Are you prepared to enter this order?

68 OFFENDER: Yes, Your Honour.

69 HER HONOUR: Thank you. Have a seat. Now I wonder if you could help me. Because it is a Commonwealth matter, is the normal form that we use sufficient?

70 MS HENDERSON: Yes, Your Honour.

71 HER HONOUR: All right, thank you. I am required under Commonwealth legislation to make a s.6AAA declaration even though it is a community corrections order. I think I am?

72 MR RICHTER: Yes, Your Honour.

73 HER HONOUR: Yes, if it is state legislation I do not have to.

74 MR RICHTER: Yes, Your Honour.

75 HER HONOUR: Pursuant to s.6AAA I declare that had you not pleaded guilty, I would have sentenced you to a term of imprisonment of ten months and ordered that you then be released upon a community corrections order for a period of two years.

76 MR RICHTER: Thank you, Your Honour.

77 HER HONOUR: Or two and a half years, sorry. As the recommendation from the Community Corrections Officer who assessed you was that you were a low risk of reoffending, minimal intervention was recommended and I do not propose therefore to place you on any judicial monitoring.

78 Could you stand up again please sir? Could I make the point that I did make, prior to the luncheon break, I know you are a busy man, I know you have commitments which take you overseas. Negotiating a community corrections order is not always a particularly easy exercise.

79 Can I make it very clear again? You can breach this order not only by reoffending, but you can breach this order by non-compliance with the conditions. Now you have to undertake 300 hours of unpaid community work. You cannot go overseas unless Corrections say it is all right to do this. So you are going to have to have fairly constant contact with them and it may be a

frustrating experience for you.

80 All I can say is this. A community corrections order basically stands between you and gaol, all right? I hope you will excuse me saying this but I often say this to persons who are the recipient of a community corrections order. Your best way of dealing with this is, if Corrections says jump, you simply ask, "how high?" and you will get through this the best way. All right, sir? Thank you very much. Have a seat.

81 OFFENDER: Thanks, Your Honour.

82 HER HONOUR: Is there anything else that I need to attend to?

83 MR RICHTER: No, Your Honour.

84 HER HONOUR: As usual, I reserve the right to edit the appalling grammar that inevitably accompanies extempore sentencing. I thank both counsel very much for their assistance in this matter.

85 MS HENDERSON: There is one other thing.

86 HER HONOUR: Yes.

87 MS HENDERSON: There is a compensation order.

88 HER HONOUR: Yes. I was surprised I had not received that before. Yes, Mr Richter?

89 MR RICHTER: I have nothing to say about that other than he is still bankrupt.

90 HER HONOUR: Yes, I understand. All right, thank you very much. I am ordering that you compensate the Bendigo Bank in the sum of $124,763.84. Thank you.

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